

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EVGENY A. FREIDMAN, VLADIMIR BASIN,	:
MAMED DZHANIYEV, Victory Taxi Garage Inc.,	: 08-CV-02458 (SAS)
Tunnel Taxi Management, LLC, Downtown Taxi	:
Management, LLC, Bazar Taxi Inc., Patron Taxi	:
LLC, Grappa Taxi LLC, Cognac Taxi LLC,	:
Calvados Taxi LLC, Tequila Taxi LLC, Jack	: AFFIDAVIT IN OPPOSITION TO
Daniels Taxi LLC, Murzik Taxi Inc., Malinka Taxi	: DEFENDANTS' MOTIONS TO
Inc., Yagodka Taxi Inc., Persik Taxi Inc., Bratishka	: DISMISS THE VERIFIED
Taxi Inc., Pumo Taxi Inc., Piguet Taxi Inc.,	: COMPLAINT
Kormilitsa Taxi Inc., Prada Taxi, Inc., Student Taxi	:
Inc., Hublot Taxi Inc., Torpedo Taxi Inc., Black	:
Label Taxi LLC, Praga Taxi Inc., Two Hump Taxi	:
LLC, Kroshka Taxi Inc., Lacoste Taxi Inc., Sangria	:
Taxi LLC, Volba Taxi Inc.,	:
	:
	: Plaintiffs,
	:
	:
-against-	:
	:
GENERAL MOTORS CORP., ELDORADO	:
NATIONAL, INC., and ARCOLA SALES &	:
SERVICE CORP.,	:
	:
	: Defendants.:

----- X

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

Evgeny A. Freidman, being duly sworn, deposes and says:

1. I am over the age of 18 and am an owner and member of the Plaintiff corporations and LLCs listed below. I submit this affidavit in support of Plaintiffs' Opposition to the Motion Dismiss filed by General Motors Corporation ("General Motors") and ElDorado National, Inc. ("ElDorado"). I have personal knowledge of the matters set forth herein.

**The Parties**

2. I reside solely in the State of New York.

3. I am solely domiciled in the State of New York.

4. I am actively involved in the New York City taxi industry.

5. It is standard in the taxi industry to set up corporations and LLCs that function as the owners of the medallions.

6. My co-plaintiffs in this action, Basin and Dzhaniev, are both domiciled in New York. Besides myself, Basin and Dzhaniev, there are no other members of each of the following named Plaintiff LLCs: Tunnel Taxi Management, LLC, Downtown Taxi Management, LLC, Patron Taxi LLC, Grappa Taxi LLC, Cognac Taxi LLC, Calvados Taxi LLC, Tequila Taxi LLC, Jack Daniels Taxi LLC, Black Label Taxi LLC, Two Hump Taxi LLC, Sangria Taxi LLC.

7. The LLCs named as Plaintiffs all principally do business in New York.

**Background**

8. During the year 2006, I along with the other individual plaintiffs in this action, Vladimir Basin and Mamed Dzhaniev, purchased 54 “restricted medallions” at an auction held by the New York City Taxi and Limousine Commission (the “TLC”). Restricted medallions can only be utilized with a wheelchair accessible vehicle.

9. General Motors and ElDorado were working with the TLC to come up with an appropriate wheelchair accessible vehicle. The Chevrolet Uplander manufactured by General Motors and retrofit by ElDorado, was the only vehicle approved by the TLC for use with the restricted medallions.

10. I purchased 52 vehicles from Arcola, the authorized dealer of the vehicles.

11. From the outset, I had numerous functionality problems with the vehicles. After months and months of attempted repairs, I was losing too much money and I brought this action and returned all of the vehicles to Arcola. Even if I had kept the vehicles on the road, they would have gone unused because taxi drivers no longer wanted to drive them because of the safety concerns.

**General Motors and ElDorado Provided Assurances**

12. My attorneys advise me that General Motors and ElDorado are now suggesting that they did not warrant the vehicles. That is simply not true. I communicated personally many times with representatives from General Motors and ElDorado prior to purchasing the vehicles. In fact, even before bidding on the medallions, I was in contact with representatives of these companies. The ability of General Motors and ElDorado to create these vehicles may have played an integral role in the medallions that would exist solely for wheelchair accessible taxicabs for New York City. Since I was a likely purchaser, I was in regular contact with General Motors and ElDorado.

13. Clearly, my partners and I would not have spent tens of millions of dollars on the restricted medallions and the wheelchair-accessible vehicles if the representatives from General Motors, ElDorado and Arcola had not provided me with assurances that these vehicles would serve the intended purpose, to serve as wheelchair-accessible taxis.

14. General Motors and ElDorado designed these vehicles with the knowledge that they would be purchased by restricted medallion owners for use as New York City taxicabs.

15. The orders made with Arcola were only a written reflection of the agreement that had already been in the works with General Motors and ElDorado. In fact,

ElDorado put us in contact with General Motors Acceptance Corporation in order to obtain financing for the vehicles. See Exhibit "C" attached.

16. The sales information provided to me included a Certificate stating that General Motors certified the vehicles as mobility vehicles. I understood that in and of itself to be an assurance that the vehicles would function to provide a service to mobility customers. Between the material I received from and conversations I had with representatives of General Motors and ElDorado, I understood that these companies would be responsible for supplying vehicles that could be used as vehicles fit for use with the restricted taxi medallions. See Exhibit "D" attached.

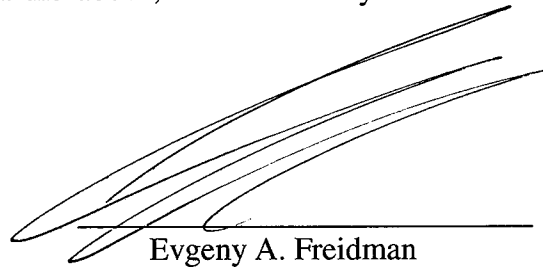
17. I communicated directly regarding the purchases with Chuck Compagnoni, a representative of General Motors, Denny Foerschler, a representative of ElDorado, and Gordon Gove a representative of Arcola. See Exhibit "E" attached.

18. My partners and I would not have purchased the vehicles if General Motors, ElDorado and Arcola had not assured me that the vehicles would function properly or their assurance the vehicles would function for my purpose as wheelchair accessible taxicabs.

19. Almost immediately after we put the taxis on the road, there were problems, until the failures got so tremendous that axles and doors were literally falling off the car mid-ride.

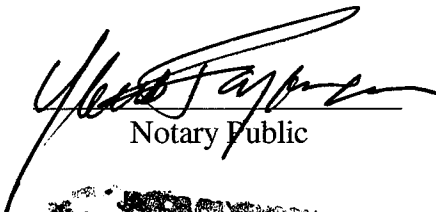
20. I understand that General Motors and ElDorado have argued that we do not have valid claims because we are only seeking economic damages. They are incorrect. We are simply asking that General Motors and ElDorado honor the warranties they provided. Thankfully, there were no personal injuries because once we realized that the cars were too dangerous to be on the roads, we removed the vehicles from the roads.

21. Accordingly, in light of the above, the motions by General Motors and ElDorado should be denied in all respects.



Evgeny A. Freidman

Sworn to before me this  
6th day of June, 2008



Notary Public

**JACOB FALVET**  
Notary Public, State of New York  
No. 015A4082003  
Qualified in Suffolk County  
Commission Expires July 28, 2010

# EXHIBIT C



14 July, 2006

**Mr. Gordon Gove**  
**Arcola Taxi Sales**  
**51 Kero Road**  
**Carlstadt, N.J.**

Gordon,

As we discussed on the phone today, regarding Gene Freidman's desire to obtain GMAC financing for his Taxi Fleet, here is the information you need

According to Ron Norman, Commercial Vehicle Sales Manager, Speedway Chevrolet, the "original selling dealer" or "dealer of record", who receives the original MSO/Title and Invoice for a GM vehicle, is the only GM Dealer who can apply for and secure GMAC financing for the vehicles' end user.

I am listing the Chevrolet Dealer's contact information below and including the GMAC Commercial Services Credit Line Request packet for you to deliver to Gene.

All questions regarding the packet should be directed to Mr. Ron Norman at Speedway.

Thanks very much for your business!

Denny Foerschner

Attachment:

**Ron Norman**  
**Commercial Vehicle Sales Manager**  
**Speedway Chevrolet, Inc.**  
**2301 N. Aspen**  
**Broken Arrow, OK 74012**  
**Phone: 918-258-8000**  
**Direct: 918-259-9367**  
**Fax: 918-259-9235**  
**Email: [SWC-buses@speedwaychev.com](mailto:SWC-buses@speedwaychev.com)**  
**[www.speedwaychev.com](http://www.speedwaychev.com)**

# EXHIBIT D



*This acknowledges that*

**ELDorado National**

*meets General Motors Special Vehicle Manufacturer requirements*

*to upfit GM products for mobility customers*



*Jim Horn*  
Director, Mobility Product Development

## ELDORADO NATIONAL AMERIVAN LIMITED WARRANTY

**EIDorado National Corporation (ENC)** warrants to the original purchaser of this product that EIDorado National will repair or replace, at its option, any parts that fail because of defective material or workmanship as follows:

- Repair or replace for a period of 7 years or 70,000 miles (112,000 km), whichever comes first, the structural metal component of the EIDorado National installed floor and ramp. These components are warranted for "rust-through" damage. Surface rust is not covered.
- Repair or replace for a period of 3 years from the in-service date or 36,000 miles (58,000 km), whichever occurs first, all other Amerivan components. Maintenance items and normal wear and tear excluded.
- Labor costs for specified parts replaced under this warranty for a period of three years or 36,000 miles from date of purchase. A EIDorado National rate schedule determines the parts covered and labor allowed. Under normal circumstances, a authorized EIDorado National Amerivan service technician must perform warranty work. In an emergency, and if service from a Amerivan service technician is not readily available, it is the owners responsibility to contact EIDorado National for authorization prior to commencement of any repair, and EIDorado National reserves the right to limit the extent of those repairs. Unauthorized repair or parts replacement by someone other than an authorized Amerivan service technician is not covered by this warranty. EIDorado National also reserves the right to require that defective parts be returned for inspection prior to paying warranty claims. Diagnostic work or troubleshooting is not covered by this warranty.

EIDorado National reserves the right to discontinue models or options, change specifications, materials, equipment or design at any time without notice and without incurring obligation.

This warranty is in lieu of any other warranty expressed or implied. This warranty covers only those parts installed by EIDorado National and is intended to supplement the vehicle manufacturer warranty. Refer to the vehicle manufacturer warranty coverage of original vehicle equipment.

### ***This Warranty Does Not Cover:***

- Damage caused by accident, road hazard, misuse, lack of proper maintenance, failure to follow towing, hoisting, and other operating instructions.

**NOTE:** EIDorado National recommends that this product be inspected by an authorized EIDorado National service technician at least once every six months or sooner if necessary. Any required maintenance or repair should be performed at that time.

### **WARNING**

THIS PRODUCT HAS BEEN DESIGNED AND MANUFACTURED TO EXACT SPECIFICATIONS. ANY MODIFICATION OF THIS PRODUCT CAN BE DANGEROUS.

### ***This Warranty Is Void If:***

- The conversion has been maintained or repaired by someone other than a authorized EIDorado National Amerivan service technician, or by a person not authorized by EIDorado National to perform such maintenance or repair.
- The conversion has been modified or altered in any respect from its original design without written authorization by EIDorado National.

**EIDorado National disclaims liability for any personal injury or property damage that results from operation of an EIDorado National product that has been modified from the original EIDorado National design. No person or company is authorized to change the design of this EIDorado National product without written authorization by EIDorado National.**

**EIDorado National's obligation under this warranty is exclusively limited to the repair or exchange of parts that fail within the applicable warranty period.**

**EIDorado National assumes no responsibility for expenses or damages, including incidental or consequential damages. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply.**

**Important: The warranty registration card must be completed and returned to EIDorado National within twenty (20) days after installation of this EIDorado National product for the warranty to be valid. The warranty is not transferable.**

**The warranty gives specific legal rights. There may be other rights that vary from state to state.**

# EXHIBIT E

**Andrew G. Rolfe**

**From:** Denny Foerschler [dennyf@enconline.com]  
**Sent:** Tuesday, June 27, 2006 8:12 PM  
**To:** Andrew G. Rolfe  
**Subject:** RE: Status Update 2 Uplanders

Andy,

The meeting referred to is 6/29, this Thursday, but you already knew that.

The first two units for Gene's fleet should be ready later this week, with planned shipment to your dealership right after the July 4<sup>th</sup> Holiday. We'll need to coordinate with Gene, Chuck & Jay regarding the planned GM PR intro of these first 2 units when they are "hacked up", painted, etc. and ready to go into service.

GM wants to really "splash" these first "Yellow Cabs" from GM in NYC since the old Caprice/Impala platforms went away. Chuck said that GM is on "Holiday" during the first 2 weeks of July, so maybe that week of July 17 is a possibility, if Gene will have the vans ready. Please keep me posted on this event.

Here is a schedule of the planned production for the first 1/2 of Arcola/Freidman Taxi's.

Qty	Start
3	7/10'
(enroute)	
3	7/17
1	7/24
3	8/07
(chassis receipt)	
3	8/14
3	8/21
4	8/28
4	9/04
4	9/11

*Wagon off*

Lock	7/24 - (chassis)
	7/31 -
	8/07 -
	8/21 - (based on
	8/28 -
	9/04 -
	9/11 -
	9/18 -
	9/25 -

*Income*  
*Aug 1st*  
*Aug 2nd*

Please review this with Gene and advise if this is acceptable, based on the time he'll need after receipt to paint, change glass, hack-up etc, before he can put them into service.

Thanks for all your help!

Denny Foerschler  
 ElDorado National  
 Mobility Division  
 Eastern Region  
 PH 866-392-6300  
 FX 785-493-2037  
 CELL 785-392-7250  
[dennyf@enconline.com](mailto:dennyf@enconline.com)

*30*  
*26*

-----Original Message-----

**From:** Andrew G. Rolfe [mailto:[Andy@ArcolaSales.Com](mailto:Andy@ArcolaSales.Com)]  
**Sent:** Tuesday, June 27, 2006 11:51 AM

**Bill Folger**

**From:** Denny Foerschler [dennyf@enconline.com]  
**Sent:** Tuesday, June 27, 2006 8:12 PM  
**To:** Bill Folger; GordonG@ArcolaSales.com  
**Subject:** FW: Status Update 2 Uplanders

-----Original Message-----

**From: Denny Foerschler**

**Sent:** Tuesday, June 27, 2006 7:12 PM  
**To:** 'Andrew G. Rolfe'  
**Subject:** RE: Status Update 2 Uplanders

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The first two units for Gene's fleet should be ready later this week, with planned shipment to your dealership right after the July 4<sup>th</sup> Holiday. We'll need to coordinate with Gene, Chuck & Jay regarding the planned GM PR intro of these first 2 units when they are "hacked up", painted, etc. and ready to go into service.

GM wants to really "splash" these first "Yellow Cabs" from GM in NYC since the old Caprice/Impala platforms went away. Chuck said that GM is on "Holiday" during the first 2 weeks of July, so maybe that week of July 17 is a possibility, if Gene will have the vans ready. Please keep me posted on this event.

Here is a schedule of the planned production for the first 1/2 of Arcola/Freidman Taxi's.

Qty	WEEK OF	Start (TO BUILD)	WEEK OF:	Lock	(will finish in Kansas)
3	enroute)	7/10'		7/24	(chassis)
3		7/17		7/31	
1		7/24		8/07	
3		8/07		8/21	(based on)
3	chassis receipt)	8/14		8/28	
3		8/21		9/04	
4		8/28		9/11	
4		9/04		9/18	
4		9/11		9/25	

→ THRU (2-3 weeks)  
 - SHIP TO NJ  
 3 AT A TIME  
 - PAID IN NJ  
 - DELIVER TO NYC  
 - PAINT  
 - GLASS, THEN  
 READY TO HACK UP!



Please review this with Gene and advise if this is acceptable, based on the time he'll need after receipt to paint, change glass, hack-up etc, before he can put them into service.

Thanks for all your help!

Denny Foerschler  
ElDorado National  
Mobility Division  
Eastern Region  
PH 866-392-6300  
FX 785-493-2037  
CELL 785-392-7250  
[dennyf@enconline.com](mailto:dennyf@enconline.com)

-----Original Message-----

**From:** Andrew G. Rolfe [<mailto:Andy@ArcolaSales.Com>]  
**Sent:** Tuesday, June 27, 2006 11:51 AM  
**To:** 'chuck.1.compagnoni@gm.com'; Denny Foerschler  
**Subject:** RE: Status Update 2 Uplanders

Gene had advised me of this meeting and asked me to join, which I intend to.

But please note that 7/29 is a Saturday, not a Thursday (which is OK with me but may not be with you)

Andy Rolfe Arcola Sales & Service Corp.

[www.ArcolaSales.com](http://www.ArcolaSales.com)  
Tel: (800) ARCOLA  
- 1 extension 177  
Fax: (201)  
507-5372

-----Original Message-----

**From:** [chuck.1.compagnoni@gm.com](mailto:chuck.1.compagnoni@gm.com)  
[\[mailto:chuck.1.compagnoni@gm.com\]](mailto:chuck.1.compagnoni@gm.com)  
**Sent:** Tuesday, June 27, 2006 9:48 AM  
**To:** [dennyf@enconline.com](mailto:dennyf@enconline.com)  
**Cc:** [andy@arcolasales.com](mailto:andy@arcolasales.com)

|Subject: Status Update 2 Uplanders

Denny, I have a meeting set up this Thurs. 7/29 with Gene Freidman and HB Chev. Could you give me an update on the first 2 Uplanders for Gene. Thanks!

CHUCK COMPAGNONI  
GM Fleet Account Executive-Gov't.  
Northeast Region  
E-Mail: [Chuck.1.Compagnoni@GM.com](mailto:Chuck.1.Compagnoni@GM.com)  
Cell #: 914-260-5183  
Office #: CT 203 -426-4783  
Fax #: 203-426-4836  
VME: 1-800-321-0164 M/B 6189